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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/570,634	03/03/2006	Ken Shoji	TAK-18150	2950
7609 7590 11/24/2008 RANKIN, HILL & CLARK LLP 925 EUCLID AVENUE, SUITE 700 CLEVELAND, OH 44115-1405				
EXAMINER				
GRESO, AARON J				
ART UNIT		PAPER NUMBER		
4131				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/570,634

Applicant(s)

SHOJI ET AL.

Examiner

AARON GRESO

Art Unit

4131

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/55/08)
Paper No(s)/Mail Date 03/03/2008
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102(a) and (b) that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8, 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by *Shiroyama et al.* (US 6328982).

Shiroyama et al. (Col 7 Lines 23-65) disclose a perfume composition, provided in a controlled manner, to produce a controlled cooling effect subjectively determined by at least one person. The cool feeling composition can be used in various products, including cosmetics and colognes (Col 4 Lines 18-30) to impart a cooling effect. A composition disclosed by *Shiroyama et al.* (Col 9 Lines 26-67) can also contain a warm feeling component. Images, or charts, are shown by *Shiroyama et al.* (Figures 1-9) using cooling sensation data acquired from testing and using the compositions.

Claims 1, 2 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by *Holt et al.* (US 6348501). *Holt et al.* (Col 5 Lines 41-67 {Example 1} and Col 6 Lines 1-34 {Example 2}) teach of formulating compositions that produce a warm sensation to a user's skin. The compositions include lavender oil or lavender extract. Lavender is

expressed by the Applicant as capable for increasing temperature sense (*Instant Application*, Eighth paragraph, "Best Mode for Carrying Out the Invention").

Claims 1, 3 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by *Yamamoto et al.* (US 5663460). *Yamamoto et al.* (Abstract and Col 7-8, Example 4, Table 3) teach formulating fragrance compositions that produce cooling sensations. The compositions include sandalwood oil; their fragrances properties are inherent.

Claims 1, 3, 13 and 15 are rejected under 35 U.S.C 102(b) as being anticipated by *Wiegand et al.* (US App. 2002/0151527). *Wiegand et al.* (Tenth paragraph of Detailed Description of Preferred Embodiments) discloses a method that uses olfactory sensory experiences with relaxing fragrances. Such a method is shown to reduce stress to enable sebum reduction (see Table 10 along with the immediately previous and subsequent paragraphs). *Wiegand et al.* directs the reader to *Librizzi et al.* (US Application 09/676876 parenting 10/218774 now US 2003/0064120) to the fragrances "incorporated by reference" in *Wiegand et al.*'s disclosure (US App. 2002/0151527).

The fragrance compositions disclosed by *Librizzi et al.* (US Application 09/676876 parenting 10/218774 now US 2003/0064120 Claims 6-7 and Eighth paragraph, "Detailed Description of the Invention") include chamomile and sandalwood that are also referenced by the Applicants as providing a cooling effect (*Instant Application*, Eighth paragraph, "Best Mode for Carrying Out the Invention"). Thus, the cooling properties of the chamomile and sandalwood fragrances are assumed to be inherent to the reference.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9 and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Shiroyama et al.* (US 6328982) as applied to Claims 1-8, 13-14, 16-19 above, and further in view of *McCarthy* (US 4603030).

Although *Shiroyama et al.* (Col 7 Lines 23-65) disclose a perfume composition provided in a controlled manner, to produce a controlled cooling effect subjectively determined, by at least one person, where the cool feeling composition can be used in various products including cosmetics and colognes (Col 4 Lines 18-30) to impart a cooling effect, and where such a composition disclosed by *Shiroyama et al.* (Col 9 Lines 26-67) can also contain a warm feeling component, presented via images, or charts, are shown by *Shiroyama et al.* (Figures 1-9) using cooling sensation data acquired from test subjects; *Shiroyama et al.* fails to disclose a method regarding uses within a certain space, as specified in instant Claims 9 and 20-23.

However, *McCarthy* (Col 3 Lines 37-61 and Figures 1 and 2) teaches a controlled method for providing "one or more desired scents" into certain theater seat spaces referred to as "units".

Thus, it would have been obvious to modify the motivating teachings of producing perfume-induced temperature sensations, disclosed by *Shiroyama et al.*,

along with *McCarthy's* method of providing desired scents in theaters to yield predictable results that would combine a method of providing a temperature sense composition into the certain space occupied by a viewer while watching a movie. Therefore, Claims 9 and 20-23 are rejected.

Claims 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Shiroyama et al.* (US 6328982) as applied to Claims 1-7, 8-9, 13-14, 16-19 above, and further in view of *Nerushai et al.* (US 6233912).

Although *Shiroyama et al.* (Col 7 Lines 23-65) disclose a perfume compositions providing temperature sensations in a controlled manner to users and evaluators, *Shiroyama et al.* fails to do so in regard to a type of map with labeled X and Y axes that would be describe values for rows and columns on a grid.

On the other hand, *Nerushai et al.* (Col 5 Lines 5-67 and Col 6 Lines1-10) teaches a liquid product map that is used for perfumes containing labeled columns and rows; the perfume map provides users a manner in which to identify the extremities, or internal ranges within the extremities, by an accompanying numerical grid associated with a perfume composition's position on the map.

Examples of labeling for the row and column map include spanning directions from "hot" to "cold" (Claim 8). The teachings of *Nerushai et al.* (Col 5 Lines 5-67 and Col 6 Lines1-10) provide for motivation to describe perfumes, in regard to physical, thermal, or feeling sensations, in more than one manner or direction.

With the success of *Shiroyama et al.* teachings that provide and describe perfumes with different sensations, along with the suggestive teachings of *Nerushai et*

a/. to provide maps for perfumes using rows and columns, or descriptive axes obviously similar to X and Y axes, it would have been obvious for one ordinarily skilled in the art, to describe preferred perfume attributes or sensation properties—including those of hotter (warmer) to colder (cooler) of the Applicants' Claims 10-11.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON GRESO whose telephone number is (571)270-7337. The examiner can normally be reached on M-F 0730-1700.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on (571) 272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David R. Sample/
Supervisory Patent Examiner
Art Unit 4131

AJG